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DOCKET FILE COPY ORIGINAL

March 30, 1999

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Secretary
Federal Communications Commission
445 12th Street, SW
TWA-325
Washington, D.C. 20554

RECEIVED
MAR 30 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**Re: Implementation of the Subscriber Carrier Selection Changes Provisions of the
Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of
Consumers Long Distance Carriers; CC Docket No. 94-129**


Dear Ms. Salas:

Enclosed for filing are the original and four (4) copies of a Motion for Extension of Effective Date of Rules Or, in the Alternative, For a Stay, filed by MCI WorldCom, Inc. on behalf of MCI WorldCom, AT&T Corp., the Competitive Telecommunications Association, Sprint Corporation, the Telecommunications Resellers Association, Excel Telecommunications, Frontier Corporation, and Qwest Communications Corporation. This petition accompanies a Joint Petition for Waiver that the joint parties are simultaneously filing in this docket.

A complete set of original signatures for this joint filing will be provided promptly.

Please acknowledge receipt by affixing an appropriate notation on the copy of the Motion furnished for such purpose and remit same to bearer.

Sincerely,


Mary L. Brown

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)

Implementation of the Subscriber Carrier)
Selection Changes Provisions of the)
Telecommunications Act of 1996)

CC Docket No. 94-129

Policies and Rules Concerning Unauthorized)
Changes of Consumers by Long Distance)
Carriers)

**JOINT MOTION FOR EXTENSION OF EFFECTIVE DATE OF RULES
OR, IN THE ALTERNATIVE, FOR A STAY**

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Dated: March 29, 1999

SUMMARY

Movants respectfully request that the Commission extend the effective date of the liability rules adopted in the Second Report and Order and Further Notice of Proposed Rulemaking adopted in CC Docket No. 94-129. Consistent with the Commission's Second Order, Movants have submitted a proposal for a Third Party Liability Administrator ("TPA"), along with a request that the Commission waive the liability rules necessary to implement the TPA. The TPA cannot, however, be established and in operation by May 17, 1999 -- the date the liability rules are currently scheduled to become effective. Movants therefore respectfully request that the Commission extend the date on which the rules become effective to six months after the TPA proposal is approved.

If the Commission does not approve the TPA proposal and corresponding waiver and extension requests, Movants respectfully request that the Commission stay the rules pending its resolution of the petitions for reconsideration filed in this docket. There is no question that carriers cannot comply with the existing rules today, and would be forced to expend enormous resources to develop and implement the systems that would allow them to do so. Given the substantial cost and practical difficulties involved, carriers should not be required to begin the development of systems that might become unnecessary if the rules change on reconsideration. In any event, even if carriers began today to develop the systems necessary to comply with the Commission's rules, those systems could not be in place by May 17, 1999. Accordingly, even if no other relief is granted, Movants request that the Commission extend the rules' effective date.

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**Before the
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**JOINT MOTION FOR EXTENSION OF EFFECTIVE DATE OF RULES
OR, IN THE ALTERNATIVE, FOR A STAY**

Introduction

MCI WORLDCOM, Inc. ("MCI WorldCom"), AT&T Corporation, Sprint Corporation, Competitive Telecommunications Association, Telecommunications Resellers Association, Excel Telecommunications, Inc., Qwest Communications Corporations, and Frontier Corporation (collectively "Movants"), pursuant to 47 C.F.R § 1.103, hereby move for an extension of the effective date of the liability rules adopted in the Second Report and Order and Further Notice of Proposed Rulemaking.^{1/} This extension is needed because the Commission is addressing a pending request that it waive the liability provisions of these rules and substitute a private dispute resolution process, and additional time is needed to give Movants the opportunity to implement this process.^{2/} Alternatively, should the Commission reject the joint petition for waiver of the liability rules, Movants request that the implementation of the rules be stayed

1/ In re Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996 Policies and Rules Concerning Unauthorized Changes of Consumers by Long Distance Carriers, CC Docket No. 94-129, FCC 98-334 (rel. Dec. 23, 1998) (the "Second Order"). The "liability rules" are 47 C.F.R. sections 64.1100(c), 64.1100(d), 64.1170 and 64.1180.

2/ Movants filed this request with the Commission today.

pending issuance of the Commission's decision on the petitions for reconsideration filed by AT& Corporation, Frontier Corporation, RCN Telecom Services, Inc., and Sprint Corporation.

In the Second Order, the Commission promulgated rules that apply when a consumer is subjected to an unauthorized carrier change.^{3/} These rules set out both the procedure that must be followed when a consumer alleges that an unauthorized conversion has occurred, and the liability that accrues once such an allegation has been made. The Commission also endorsed an alternative to the rules it had established, recognizing that an independent third party liability administrator ("TPA") could "discharge carrier obligations for resolving disputes among carriers and subscribers with regard to slamming," Second Order ¶ 55, and "might better serve to address our concerns." *Id.* Thus, the Commission encouraged carriers to develop a TPA proposal and indicated that, if an adequate proposal were submitted, it would "be open to receiving requests for waiver of the liability provisions of our rules for carriers that agree to implement" such an alternative. *Id.*

Sharing the Commission's view that a TPA system would be the best solution to the problem of unauthorized conversions, industry participants have worked diligently and expended substantial resources to develop a satisfactory TPA proposal. That proposal -- along with a request to waive the rules necessary to implement it -- has been submitted concurrently with this motion. As explained below, however, that proposal regrettably cannot be implemented within the 90 day period established in the Second Order.^{4/} Movants' best estimate is that it will take at

3/ The Commission uses the word "slam" to describe all unauthorized changes, both intentional and inadvertent.

4/ The Commission delayed the effective date of the liability rules for 90 days beyond the date of publication in the Federal Register in order to give carriers time to develop and implement a TPA system. Second Order ¶¶ 5, 253. Thus, the liability rules are currently scheduled to become effective on May 17, 1999.

least six months to establish an operational TPA. Accordingly, Movants respectfully request that the Commission delay the effective date of the liability rules until six months after the waiver request is approved.

In the alternative, pursuant to 47 C.F.R. § 1.429, Movants request that the Commission stay the rules pending its resolution of the petitions for reconsideration filed by AT&T, Frontier Corporation, Sprint Corporation and RCN Telecom Services, Inc. As those petitions demonstrate, the rules as written are overly complex and unacceptably burdensome, and the industry does not have in place the requisite systems to implement them. Given that the rules might change on reconsideration, as a matter of fundamental fairness, carriers should not be forced to expend the vast sums needed to develop systems that might be rendered unnecessary. Hence, if the TPA proposal is not approved, a stay pending the Commission's decision on reconsideration quite clearly is warranted. In any event, even if no other relief is granted, Movants request that the Commission extend the rules' effective date because, as noted above, the industry simply cannot implement the rules by the current effective date of May 18, 1999.

ARGUMENT

I. The Commission Should Extend The Effective Date Of Its Liability Rules So A Third Party Liability Administrator Can Be Established.

Section 1.103(a) of the Commission's rules, 47 C.F.R. § 1.103(a), provides that "the Commission may, on its own motion or on motion by any party, designate an effective date that is either earlier or later in time than the date of public notice of such action." In the Second Order, the Commission correctly anticipated that an extension of the effective date was necessary here in order "[t]o afford carriers time to develop and implement an industry-funded independent dispute resolution mechanism. . . ." Second Order ¶ 56. Having developed such a proposal, the

industry has submitted it to the Commission, along with a waiver request. As demonstrated in the attached affidavit of Sally McMahon, Executive Director, Financial Operations at MCI WorldCom Inc., however, and for the reasons set forth herein, 90 days is insufficient time for implementation of a TPA system. Instead, at least six months after approval of the TPA is required for a functioning TPA to be put in place. McMahon Decl. ¶ 5. Accordingly, Movants respectfully request that the Commission extend the effective date of its rules to six months after it approves the proposal and accompanying request for a waiver.

Although the industry is working together to establish a TPA, such an entity does not now exist. The TPA proposal is practical, but ambitious. The new entity will be charged with: 1) operating a call center that will receive customer complaints and initiate the processing of those complaints; 2) initiating requests for conversion back to a customer's preferred carrier and ensuring that those requests are properly executed; 3) conducting nonbinding dispute resolution to determine whether or not an unauthorized conversion has occurred; 4) providing regular statements to carriers detailing the amounts owed as a result of unauthorized changes, and monitoring the payment between carriers; 5) developing a database to monitor repeated complaints from individual customers in order to detect fraud; and 6) reporting to interested state and federal agencies. See Joint Petition for Waiver at 16-25.

The first step in establishing an entity that can perform effectively all of these tasks is to create an the industry board that will govern the TPA. This process will involve several initial meetings, formal incorporation, and the drafting and adoption of appropriate bylaws. Operational procedures will then be established. McMahon Decl. ¶ 7.

Once the Board is constituted, it must then write and issue a formal request for proposal ("RFP") from third-party vendors seeking to become the TPA. The RFP will necessarily be a

detailed document. Accordingly, vendors must be given a reasonable amount of time to review and prepare responses to the proposal. *Id.* ¶¶ 8-9.

Thereafter, the Board will evaluate the responses, and select the vendor which will become the TPA. Because the TPA will perform virtually every function needed to ensure that the Commission's rules are implemented effectively, this selection process is critical to the success of the undertaking. The process may well include follow-up meetings with individual vendors to discuss details of their proposal. Once a vendor has been selected, a contract between the vendor and the Board will be negotiated and executed. *Id.* ¶¶ 9-10.

Thereafter, the next critical step will be establishing the operation of the TPA. More specifically, the vendor must first establish a "call center" -- the place to which calls from complaining consumers will be directed. Based on the total number of complaints regarding alleged unauthorized conversions of which Movants are aware, and the number of carrier changes made per year, the call center must be capable of handling as many as 500,000 calls per year.^{5/} McMahon Decl. ¶¶ 11-12. This will require the TPA to establish substantial physical facilities -- including hundreds of phones, computers and work stations. *Id.*

The TPA will also be required to develop and install systems capable of performing the wide variety of tasks for which it will be responsible. For example, because the TPA will have to determine whether a consumer who claims to have been switched without authorization in fact authorized the change, the TPA will need to establish connectivity to carriers so that verification information can be transferred quickly and accurately to the TPA. As a practical matter, this

^{5/} There are roughly 50 million carrier changes per year nationwide. If a mere 1% of those changes generate some type of telephone call that is routed to the TPA, the TPA will receive half a million calls per year. In the Second Order the Commission noted that AT&T alone estimated that 500,000 of its customers were switched without authorization during 1997. Second Order ¶ 2 & n.8.

means that the industry participants and the TPA must jointly develop electronic interfaces that allow verification information to flow to the TPA. Because consumers will continue to place calls complaining about unauthorized conversions to the FCC and to state commissions, connectivity between each of these commission and the TPA also must be established. *Id.* ¶¶ 14-15.

Because the TPA will be responsible for ensuring that customers are switched back to their carrier of choice, it also will need to develop and install appropriate confirmation systems. Similarly, because the TPA will calculate and monitor the payment of funds between carriers, it will require internal operating systems that enable it to issue invoices and reconcile accounts between carriers. The TPA will assume monthly reporting requirements, both to the carriers and to the FCC, and could report to state commissions and state Attorneys General. To discharge these reporting responsibilities, the TPA will need to establish the requisite supporting electronic systems. *Id.* ¶¶ 16-17.

Finally, to guard against fraud, the TPA will be required to develop a database for tracking consumer complaints and the TPA's resolution efforts. Because the Commission's rules excuse customers who have not paid their bill from liability for the first 30 days of charges incurred after the allegedly unauthorized change, an incentive is created for consumers to press even dubious claims. Installation and maintenance of a reliable, comprehensive database, then, is critical. *Id.* ¶ 18.

After establishing the necessary internal systems, the TPA will hire and train personnel to operate them. This process will go beyond training staff members to receive and log calls. Because the TPA staff will investigate allegations of unauthorized carrier changes, resolve those

allegations, and, in appropriate cases, calculate the amounts owed, broad-based training of the TPA's staff will be of paramount importance. *Id.* ¶ 13.

There is no question that this multi-faceted process will take time -- at least six months after the TPA is constituted. *Id.* ¶¶ 5, 19. Movants share the Commission's desire to combat zealously unauthorized carrier changes. To that end, MCI WorldCom and other carriers have acted promptly to devise a TPA system and have already undertaken preliminary steps to develop it. *Id.* ¶ 6. Among other things, they have met with prospective vendors on several occasions to ascertain whether the TPA proposal is technically viable. *Id.* But, obviously, the industry cannot move beyond that point until the Commission approves the TPA proposal. *Id.* Accordingly, Movants request that the date on which the liability rules become effective be extended until six months after the TPA proposal and accompanying waiver request is approved.

The requested extension will allow an orderly transition to a regime in which customer complaints are handled efficiently and consistently by a single entity. The Commission should therefore follow the practice contemplated by § 1.103, and, as it has in similar circumstances, extend the effective date of its liability rules. *See, e.g.* Memorandum Opinion and Order, In re Telephone Number Portability, 13 F.C.C.R. 16315 (1998) (extending the date by which certain carriers must provide number portability by nine months because the technical standards needed to do so were not yet in place). Once a functioning TPA is in place, the Commission can then waive the rules as they apply to the carriers participating in the TPA, thereby allowing all parties to reap the benefits the Commission has already recognized such a system would confer.

II. If the Commission Does Not Grant An Extension Based On The TPA Proposal, It Should Stay Its Liability Rules Until It Resolves The Pending Petitions For Reconsideration.

If the Commission does not approve the TPA proposal and grant the extension necessary to implement it, Movants respectfully request that the Commission stay the liability rules pending its resolution of the petitions for reconsideration filed by AT&T, Frontier Corporation, RCN Telecom Services, Inc., and Sprint Corporation. Section 1.429 of the Commission's rules provide for the entry of a stay pending reconsideration for "good cause shown". 47 C.F.R. § 1.429(k). Good cause plainly exists here because, as set out in further detail below, absent a stay Movants will be forced to spend substantial resources in an effort to develop the systems necessary to implement the Commission's rules, while the Commission at the same time is reconsidering the practicality and legality of those same rules. Moreover, even with their best efforts, Movants simply will not be able to come into compliance with the rules over the next three months.

The pending petitions demonstrate that reconsideration of the Commission's liability rules is plainly warranted. Movants will not reiterate those arguments here, except to note that they agree that there are very serious questions presented as to whether the rules as currently drafted are reasonable. Although Movants support adoption of rules designed to deter unauthorized carrier changes, the existing rules place an extraordinary burden on the preferred carrier -- which is, after all, the victimized carrier. For these and other reasons, Movants believe that, absent a TPA, the existing rules are simply not a rational solution to the problem identified by the Commission.

Movants are hopeful that, in the unlikely event that the TPA proposal is not approved, the Commission will reconsider its rules to make them more workable and equitable. Until that

reconsideration process is completed, however, the industry will be subject to requirements with which it simply cannot comply because the technical capabilities needed to do so are not in place. Thus, in the absence of a delay of the effective date, only a stay will protect carriers from potentially unnecessary extraordinary expenditures. Because even these expenditures will not bring carriers into compliance within three months, as currently contemplated by the rules, a stay is particularly warranted.

As explained in the McMahon declaration, there are at least two independent functions that carriers cannot perform now if they were required to comply with the current version of the rules. The first involves connectivity between carriers that would allow carriers to exchange data; the second involves fundamental alterations to carriers' internal systems needed to allow them to transmit data in usable format and to process such data once received. It is undisputed that developing and implementing each of these systems would be extraordinarily time-consuming and expensive. McMahon Decl. ¶ 21.

More specifically, the new rules require the preferred carrier to collect from the unauthorized carrier amounts paid by a consumer, and to refund to that consumer any amount in excess of what the consumer would have paid the authorized carrier absent the unauthorized change. The preferred carrier must, therefore, obtain extensive service and pricing data. Because the preferred carrier may charge different amounts depending on the date, the day of the week, or the time a call is made, in order to re-rate a consumer's bill, the preferred carrier would need extremely detailed information about each and every call placed by the consumer. *Id.* ¶¶ 23-24.

If only one or two complaints were processed each week, the preferred carrier could conceivably process those records manually. But as the Commission noted, literally tens of thousands of such complaints are processed each year. *See* Second Order ¶ 2. To address

responsibly this volume of complaints, carriers would have to exchange electronically relevant price and call data. No system currently exists, however, that would allow them to do so. Moreover, such a system, even if feasible, would be vast, electronically bonding each of the hundreds of carriers within the industry. Thus, before carriers can comply with the re-rating provisions of the rules, they must develop and implement systems that allow the massive exchange of detailed usage data among hundreds of carriers.^{6/} McMahon Decl. ¶¶ 23, 25, 27, 30-31.

Before such a system can be devised, uniform industry standards must be developed for formatting billing and invoice data. Today, carriers' systems are different -- larger carriers cannot, and do not, utilize "off the shelf" applications. Existing traffic systems are highly specialized and carriers' data is saved in a multitude of different formats. Because this prevents billing data from one carrier to be transferred to (and understood by) another carrier's systems, once industry standards are adopted each carrier would have to revise its own internal systems to conform with those standards so that its data can be translated into a format that could flow through the uniform bonding system. *Id.* ¶¶ 28-29.

The practical impediments to implementation do not stop there. Even if the unauthorized carrier could somehow provide the preferred carrier with a customer's usage data, the preferred carrier must then calculate what it would have charged the customer for the same calls. Carriers,

^{6/} The industry has developed the Customer Subscriber Accounts Record Exchange ("CARE") system, which provides uniform standards for customer information and carrier change orders. The complex and variable information needed to perform re-rating is not part of CARE, however. Indeed, CARE does not contain fields for any billing and invoice information. Moreover, CARE is limited at this time to ordering processes between LECs and interexchange carriers ("IXCs"). No interexchange carriers are linked by the CARE system. Although that system might be used as a starting point for development of the requisite interfaces, the process would take years, not months.

however, frequently change the calling plans they offer. Thus, the preferred carrier cannot simply calculate the amounts the consumer would have been charged based on the rates in effect on the day the data is received from the unauthorized carrier. Instead, the preferred carrier must somehow apply the traffic data to its historical billing rates. Currently, none of Movants' systems store such historical data, and Movants are unaware of any automated mechanism that would allow carriers to perform re-rating analysis against rate plans that have been altered in the interim. Developing systems that have this capability will take considerable time and will require further expenditures of corporate resources.^{7/} *Id.* ¶ 25.

Because fundamental concerns have been raised by parties seeking reconsideration of these and other features of the Commission's existing rules, there is a very real possibility that they will be altered materially on reconsideration. The level of projected development costs necessary to implement the current rules by itself, constitutes "good cause" to grant a stay because absent a stay carriers will be forced to "incur compliance costs while the possibility of changes to [these] requirement[s] still exists." Order, In re Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area, 13 F.C.C.R. 6427, ¶ 3 (1998); see also Memorandum Opinion and Order, In re Rules and Policies Regarding Calling Number Identification Service -- Caller ID, 11 F.C.C.R. 17466, ¶ 6 (1996) (staying application of rule pending reconsideration because the requirements "may be modified as a consequence of information received in response to the . . . Reconsideration Petition"); Memorandum Opinion and Order, In re Rules and Policies Regarding Calling Number

^{7/} The impossibility of implementing the rules in the time prescribed by the Commission will be expanded upon in comments filed in response to the petitions for reconsideration.

Identification Service -- Caller ID, 13 F.C.C.R. 5137, ¶ 1 (1998) (staying application of rule “until the Commission addresses [a pending] petition for reconsideration”).

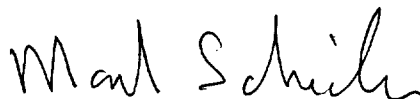
For all these reasons, for “good cause shown,” the Commission should grant a stay pending reconsideration. See Order, In re Policies and Rules Concerning Unauthorized Changes of Consumers’ Long Distance Carriers, 11 F.C.C.R. 856, ¶ 2 (1995) (noting that “the public interest would best be served by ruling on the issues raised in the pending petitions for reconsideration before requiring affected parties to take actions to comply”).^{8/} If the Commission declines to grant a stay pending reconsideration, however, it should nonetheless extend the date on which the liability rules become effective. It is clear that carriers cannot establish by May 18, 1999 even provisional systems necessary for compliance with the rules. A reasonable extension of the rules’ effective date is, therefore, essential. See Memorandum Opinion and Order, In re Telephone Number Portability, 13 F.C.C.R. 16315 (1998).

^{8/} Additionally, MCI WorldCom filed today a protective petition for review of the Second Order with the D.C. Circuit. MCI WorldCom anticipates that it will be able to dismiss this appeal before it is acted on by the Court. However, in the unlikely event that the Commission does not approve the TPA proposal and grant the waiver and extension request, and the petitions for reconsideration are not granted, MCI WorldCom would proceed with its judicial challenge to the Second Order. MCI WorldCom believes it would easily meet the four-pronged test necessary for a stay pending judicial review. See Washington Metropolitan Area Transit Comm’n v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977). For this reason, and particularly because the industry simply does not have the technical capability to comply with the rules at this time, if it became necessary to pursue such a challenge, the Commission should grant a stay pending judicial review, pursuant to Section 416(b) of the Communications Act of 1934 and 5 U.S.C. § 705.

Conclusion

Movants' request for an extension of the effective date of the rules, or, in the alternative, for a stay, should be granted.

Respectfully submitted,



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**DECLARATION OF SALLY ANN MCMAHON
In Support of Joint Motion for Extension of Effective Date of Rules
Or, in the Alternative, for a Stay**

I, Sally Ann McMahon, being first duly sworn upon oath, do hereby depose and state as follows:

1. My name is Sally Ann McMahon. I am Executive Director, Financial Operations at MCI WorldCom Inc. ("MCI WorldCom"). My areas of responsibilities include quality management for mass markets, planning for telemarketing and customer service, and back-office processing.

2. I am head of the team at MCI WorldCom that has been charged with implementing the new FCC unauthorized customer conversion rules (the "Rules") set forth in the Second Order^{1/} for the residential and small business markets. Over the past three months, I have also been part of an MCI WorldCom team that has worked closely with a telecommunications

^{1/} Second Report and Order and Further Notice of Proposed Rulemaking, In re Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers, CC Docket No. 94-129, FCC 98-334 (rel. Dec. 23, 1998) ("Second Order").

industry group to design a system using an independent third party liability administrator ("TPA") to discharge carrier obligations for resolving unauthorized customer conversion disputes among carriers and consumers.

3. The purpose of my affidavit is twofold. First, I will explain why it will be impossible to develop and implement a TPA system by May 18, 1999, as contemplated by the FCC in the Second Order. Second, I will explain why the absence of industry standards and automated, electronic systems -- which will allow billing and other relevant information to be quickly and efficiently exchanged and processed between carriers, as required by the Rules -- make the Rules unworkable at this time, or at any time in the near future.

The TPA System Will Not Be Developed And Implemented by May 18, 1999

4. The TPA system would provide a single point of contact to resolve unauthorized customer conversion problems and would create a neutral body to resolve disputes regarding unauthorized customer conversion liability. I believe that the TPA system would benefit consumers, carriers and regulators.

5. It will be impossible, however, to develop and implement a TPA system by May 18, 1999, as designated by the FCC in its Second Order. Instead, it is my best estimate that it will take a minimum of six months -- beginning with the date the FCC approves the Joint Petition for Waiver -- for the TPA system to be in place and operational. My reasons for this time estimate are set forth below.

6. The industry group has developed -- as the FCC encouraged -- a basic scheme for a TPA system. Given the considerable resources needed to implement such a system, however, it would not have been prudent to begin implementing that scheme before the FCC

passed on the waiver petition. As soon as the FCC approves the Joint Petition for Waiver, the industry will begin this process.

7. The initial task for the industry will be to constitute an Industry Board that will govern the TPA. Given the number of participants and their differing positions, plus the novelty of the undertaking, this will likely require a number of meetings, and outside legal counsel will have to draft appropriate legal documents. The constituted Board will then have to develop bylaws and operating procedures for the TPA, and determine how to finance the TPA.

8. The Board will then begin the critical task of selecting and contracting with a vendor to serve as the TPA. The Board will initially have to write and issue a "Request for Proposal" ("RFP") from third-party vendors. The Board may decide to hire outside counsel or obtain other professional assistance to design the RFP and review the bids.

9. Once the RFP is issued, third-party vendors will likely have at least a month to submit bids. The Board may choose to meet with prospective vendors before and after the issuance of its RFP in order to ensure that vendors' bids are the most responsive they can be. Such meetings should help speed the selection process and enable faster implementation once a vendor is selected.

10. Once vendor bids are collected by the Board, bids will have to be properly evaluated and a vendor selected. A contract between the selected vendor and the Board will also have to be negotiated and drafted.

11. The TPA will then have the monumental task of developing and implementing a call center operation which can handle tens of thousands of unauthorized customer conversion complaints a year. The TPA's basic functions will include: (1) ensuring that a consumer is switched back to its preferred carrier; (2) ensuring that consumer credits and

carrier-to-carrier compensation are implemented efficiently and properly; (3) administering a nonbinding dispute resolution process between carriers and consumers; (4) determining whether an unauthorized conversion occurred; and (5) engaging in such monitoring and reporting as will be required to ensure the execution of its functions.

12. One of the TPA's first priorities will be to obtain space where the call center will be located and to build offices and workstations for its personnel. The TPA may choose to lease the call center space and may decide to subcontract with a company to run and manage call center operations.

13. The TPA will also have to hire and train personnel. This will take a significant amount of time, as the TPA will have to train its personnel how to judge whether unauthorized customer conversion complaints are legitimate or not. Such training is considerably more complex than simply teaching people about proper customer relations.

14. To become operational, the TPA will also have to develop and implement connectivity with all participating carriers, the FCC and state commissions. Consumers with unauthorized conversion complaints do not call just one place. Instead, they call the FCC, state commissions, participating carriers and local exchange carriers ("LECs") to complain about unauthorized conversions. Telephone connectivity between the TPA and the various commissions and carriers, therefore, is necessary to quickly transfer these calls to the TPA for resolution. Until this "hot transfer" capability is implemented, the FCC, state commissions, participating carrier and LECs will only be able to refer consumers to the TPA by providing the TPA's phone number and asking the consumer to call the TPA directly. By contrast, "hot transfer" capability will allow the FCC, state commissions, participating carriers and LECs to route calls immediately to the TPA without hanging up on the consumer.

15. The TPA and participating carriers will also have to be electronically connected in order to facilitate the transfer of vast amounts of data. For example, electronic data connectivity will allow carrier change verification information to flow quickly and easily between the TPA and participating carriers, and will also allow the exchange of consumer billing records and consumer payment histories

16. Electronic data connectivity between the TPA and participating carriers will further allow the TPA to monitor closely whether a consumer is switched back to its preferred carrier and whether consumer credits and carrier-to-carrier compensation are accomplished efficiently and properly.

17. Prior to opening for business, the TPA will also need to establish extensive operating systems that allow it to resolve unauthorized customer conversion disputes, reconcile consumer accounts, and direct consumer refunds and carrier-to-carrier compensation.

18. Furthermore, to protect against fraud, the TPA will need to develop a database of consumers who repeatedly complain about unauthorized conversions and the resolution of those complaints. The FCC's rules absolving consumers from liability to unauthorized carriers for the first thirty days after an unauthorized conversion occurs creates incentives for certain consumers to claim falsely that they have been converted without authorization. The TPA may also have reporting obligations to state and federal agencies and will have to implement databases to collect information relevant to those reports.

19. Undoubtedly, there will likely be many other activities that must occur and processes that must be put in place before the TPA system can become fully operational. Ninety days is simply an inadequate amount of time to begin an operation of this magnitude and make it fully functional and effective. Six months, at a minimum, is a more reasonable estimate.

20. Therefore, the FCC needs to delay implementation of the Rules for at least six months. The current unauthorized customer conversion system should remain in place during this period. It would create consumer confusion, divert needed resources and waste substantive efforts to have an interim set of procedures -- which are totally new and yet to be implemented by carriers -- in place for six months while carriers implement the TPA system.

The Procedures Set Out In the FCC's Rules Are Unworkable At This Time

21. The fundamental reason why the Rules cannot be implemented at this time is that they set forth procedures that will require massive amounts of data and information to be exchanged between carriers on a daily basis. But, at the present time: (1) no industry standards define the form in which this data should be transferred between carriers; and (2) no automated, electronic systems are in place which will allow the data to be quickly and efficiently exchanged between carriers, and processed once it is exchanged.

22. Development and implementation of the standards, systems and processes will be very time-consuming and expensive. There is no question that MCI WorldCom and other carriers will be unable to satisfactorily implement the FCC's new system by May 18, 1999, the date on which the Rules take effect.

23. The Rules' re-rating requirement provides an excellent illustration of the complexities and difficulties involved in implementing the FCC's system. In instances in which a consumer pays a bill from an unauthorized carrier and the unauthorized carrier is unable to provide verification of an authorized change, the Rules require that the unauthorized carrier remit to the authorized carrier all charges paid by the consumer, and that the authorized carrier then refund or credit the consumer the difference between what it paid to the unauthorized carrier and

what the consumer would have paid the authorized carrier.^{2/} In order to “re-rate” the consumer in this manner, the authorized carrier will need to obtain and manipulate large amounts of billing and invoice information from the unauthorized carrier.^{3/}

24. For example, the authorized carrier will need the unauthorized carrier’s call records for the consumer. These records indicate the dates, times and destinations of each of the consumer’s calls. They are critical to the re-rating process because the two carriers will likely charge different amounts depending on the date, the day of the week, the destination, and the time each call was made. The authorized carrier also will need to acquire the unauthorized carrier’s invoice summary. This summary will include any taxes and credits specific to the consumer’s bill.

25. The systems that will be developed to accomplish re-rating must also have the ability to re-rate charges according to the rates that were in effect for the consumer at the time the consumer was converted without authorization. These rates may be different from the rates the carrier currently charges. At present, MCI WorldCom’s systems do not store such historical data, and I am unaware of any automated, electronic mechanism that will allow carriers to perform re-rating analysis against rate plans that are no longer in effect.

26. MCI WorldCom and other major carriers currently process tens of millions of orders annually and receive thousands of unauthorized customer conversion complaints a year. I expect the number of complaints to increase over the next few years as consumers learn about

^{2/} Second Order ¶¶ 34, 38.

^{3/} The authorized carrier will also need to receive detailed billing and invoice information from the alleged unauthorized carrier in instances where that carrier provides verification of an authorized change. Under the Rules, the authorized carrier must bill the consumer in the amount previously removed from the consumer’s bill and then, upon payment, forward this amount to the alleged unauthorized carrier. See Second Order ¶ 42. Clearly, the authorized carrier cannot bill the consumer unless it has the alleged unauthorized carrier’s billing and invoice information for that consumer.

the 30-day absolution rule and state commissions and carriers encourage unauthorized customer conversion complaints to be electronically filed. Regardless of legitimacy, MCI WorldCom will have to investigate every complaint.

27. With so many complaints, it will be logistically impossible for carriers to exchange and process on a manual basis the billing and invoice data necessary for re-rating a consumer. Instead, automated systems will have to be put into place whereby carriers can electronically exchange and process this data. At present, no such systems are in place, or even conceptually exist.

28. Before systems of this complexity can even be devised, the industry will have to develop uniform standards for formatting billing and invoice data. Every carrier has different methods and formats for billing and invoicing. Without uniform standards, a carrier will be forced to find a way to translate the data it receives from other carriers into a format which its internal systems can understand. Since new carriers are formed on a regular basis with new or updated systems, there is no way MCI WorldCom will be able to translate the data received from the hundreds of competing carriers without uniform standards.

29. Uniform standards will also be needed for the other types of records and data that the Rules require carriers to exchange. For example, billing and collection expenses, including attorneys' fees, claimed by the authorized carrier^{4/} will have to be standardized in order to be effectively exchanged, processed and verified by carriers. Uniform standards will also be needed to facilitate and verify the transfer of funds between carriers.^{5/}

^{4/} See Second Order ¶ 36.

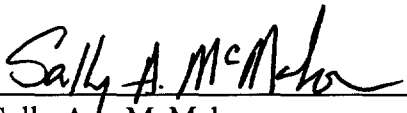
^{5/} See Second Order ¶¶ 23, 45.

30. Uniform, industry-wide standards are not a novel concept in the telecommunications industry. For many years, the Customer Accounts Record Exchange ("CARE") process has provided uniform standards for customer information and carrier change orders. But it took much more than three months to develop CARE, and the CARE process cannot accommodate the complex and variable information included in invoices and bills. Thus, CARE does not presently contain fields for any billing and invoice information. Moreover, CARE is limited at this time to ordering processes between LECs and interexchange carriers ("IXCs"). It will take a great amount of time and expense before CARE can accommodate invoicing and billing information between all carriers.

31. Until industry-wide standards are developed, carriers will not be able to begin to create internal systems for processing the billing and invoice data exchanged between carriers. To my knowledge, no carrier today has an automated system in place that will allow billing and invoice data to be electronically transferred to, and received from, another carrier in usable form, or that has the ability to re-rate another carrier's charges.

32. In sum, each carrier will have to individually develop internal systems to store, hold and transfer billing data, and to re-rate unauthorized calls. The development of such systems will take far more than three months to develop and could cost many millions of dollars. For these reasons, many aspects of the FCC's new unauthorized customer conversion rules, including in particular the re-rating provisions, cannot be implemented in three months.

I declare, under penalty of perjury, that the foregoing is true and correct. Executed on
March 23, 1999.


Sally Ann McMahon

CERTIFICATE OF SERVICE

I, Vivian Lee, do hereby certify that copies of the foregoing Joint Petition for Waiver of MCI Worldcom, Inc. in the Matter of Implementation of the Subscriber Carrier Section Changes Provisions of the Telecommunications Act of 1996 and the Policies and Rules Concerning Unauthorized Changes of Consumers by Long Distance Carriers were sent, on this 30th day of March, 1999, via first-class mail, postage pre-paid, to the following:

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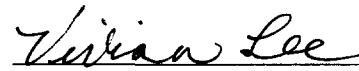
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